

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL APPEAL NO. 783 OF 2022

Satish Laxman Surve

..Appellant

Versus

The State of Maharashtra & Anr.

..Respondents

Mr. Viresh V. Purwant a/w. Rushikesh Kale for Appellant.

Smt. M. R. Tidke, APP for State/Respondent No.1.

Mr. R. K. Mendadkar for Respondent No.2.

CORAM : SARANG V. KOTWAL, J.

DATE : 2nd DECEMBER 2022

PC :

1. The Appellant has challenged the order dated 21/07/2022 passed by learned Special Judge, Barshi in Criminal Bail Application No.328 of 2022. In effect, the appellant is seeking anticipatory bail in connection with C.R.No.235 of 2022, registered at Tembhurni police station, Solapur, under sections 323, 504, 506, 143 and 147 of the I.P.C. and under sections 3(1)(r), 3(1)(s) and 3(2)(va) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989.

2. Heard Shri. Viresh Purwant, learned counsel for the

Appellant, Smt. Tidke, learned APP for the State and Shri. Mendadkar, learned counsel for the Respondent No.2.

3. The F.I.R. is lodged by the Respondent No.2. He has stated that, he belonged to a Scheduled Tribe. He was contesting the election in a Co-operative society in village Paritewadi and Akole. The voting in the election was to take place on 07/04/2022 in a school in Parite village. In the same election, one Jyotiram was also contesting the election from the open category. At about 9.00a.m. on that day, when the Respondent No.2 was proceeding to cast his vote, at that time, the Appellant, aforementioned Jyotiram and 3 others came there. It is alleged that the appellant uttered abusive words with reference to his tribe. Others beat him by slapping him and then they went away. On this basis, the F.I.R. was lodged.

4. Learned counsel for the Appellant submitted that the ingredients of Section 3(1)(r) and 3(1)(s) of the SC & ST Act are not made out as F.I.R. does not show that the offence was committed in presence of public or any other independent witness.

He submitted that, even the offence U/s.3(2)(va) of the SC & ST Act is not made out as there are no injuries caused to the Respondent No.2. The interim order passed by this Court (Coram: Prakash D. Naik, J.) mentions that, there were two eye witnesses but their statements were contradictory and were recorded much belatedly on 29/05/2022. He, therefore, submitted that the F.I.R. is lodged with malafide intentions and it is a politically motivated F.I.R. Therefore, the Appellant deserves to be granted anticipatory bail.

5. Learned APP, as well as, learned counsel for the Respondent No.2 submitted that, the nature of utterance shows that it is an offence under the Atrocities Act. Moreover, the investigation papers show statements of witnesses who have seen the incident and heard the abuses. According to them, therefore, bar of Section 18 of the SC & ST Act operates.

6. I have considered these submissions and I have perused the investigation papers. After the F.I.R. is lodged, the informant/Respondent No.2's supplementary statement was

recorded, in which, he has stated that, he was not able to state names of the persons who were present at the time of incident. The investigation proceeded and then statements of Rajendra Parbat, Bhalchandra Patil and Santosh More were recorded. Out of them, Bhalchandra Patil has not attributed those utterances specifically to the appellant. There were general allegations against all the accused. In any case, these statements are recorded much belatedly on 29/05/2022. The statement of Santosh More U/s.164 of Cr.p.c. was recorded on 15/07/2022. Thus, there is inordinate and unexplained delay in recording this statement. The informant's version is not immediately supported by any eye witness. There is background of political rivalry. Therefore, there is a reasonable possibility that the F.I.R. is lodged because of this political rivalry with malafide intention. The Appellant has made out a case for grant of anticipatory bail in his favour. These observations are restricted to passing of this order and the Trial Court shall not be influenced by any of these observations.

7. Hence, the following order:

O R D E R

- i) In the event of his arrest, in connection with C.R.No.235 of 2022, registered at Tembhorni police station, Solapur, the appellant is directed to be released on bail on his executing P. R. Bond in the sum of Rs.30000/- with one or two sureties in the like amount.
- ii) The Appeal is allowed and is disposed of.

(SARANG V. KOTWAL, J.)